

California Regional Water Quality Control Board
Santa Ana Region

May 27, 2005

STAFF REPORT

ITEM: 5

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Ruben Ramos, 4181 Mountain Drive, San Bernardino, San Bernardino County, APN 0265-161-32

DISCUSSION:

On April 26, 2005, Ruben Ramos contacted staff requesting an exemption from the Board's minimum lot size requirements for the connection of a remodeled barn to an existing septic tank-subsurface disposal system on a 0.50-acre lot at 4181 Mountain Drive, San Bernardino. This area of San Bernardino is unsewered. There is currently a home on the lot that is connected to the existing septic tank-subsurface disposal system and a barn that was converted to a second home (granny flat). The second home (granny flat) is currently connected to the existing septic system. Mr. Ramos and his children purchased the lot/home with the intention of remodeling the barn as a retirement residence for Mr. Ramos and his wife. Mr. Ramos' children live in the main house. The conversion of the barn to a residence and connection of this residence to the existing septic system were completed without County or Regional Board approval. Mr. Ramos is now seeking that approval after-the-fact.

On October 13, 1989, the Regional Board adopted Resolution No. 89-157, which requires new developments for which on-site subsurface disposal system use is proposed to have a minimum one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwater of the Region. Mr. Ramos' proposed development is a new development as defined in Resolution No. 89-157 and is therefore subject to the minimum lot size requirements specified therein. With a density of 0.25 acres per dwelling unit, Mr. Ramos' proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. Ramos' request for an exemption from the minimum lot size requirements.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems, (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, the Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to "new" developments. Staff of the San Bernardino County Building

and Safety Department advised Board staff that the barn construction was approved in 1986; however, the inclusion of fixture units and connection to the existing septic system was done without approval. Therefore, Mr. Ramos' development on the site is a new development for the purposes of the MLSRs. Mr. Ramos is now confronted with the need to satisfy both County and Regional Board requirements.

Mr. Ramos notes that the additional flows that would occur as a result of this project would be no greater than the flows that would be allowed if he were to add on to the existing house and replace the existing septic tank to accommodate the increased flows, which would be exempt from the minimum lot size requirement. On this basis, Mr. Ramos is appealing to the Regional Board for reversal of staff's denial of an exemption from the minimum lot size requirements.

While it is true that there would be no difference in wastewater flows on an immediate basis, i.e., while Mr. Ramos and his children own the property and reside with him, there can be no guarantee that wastewater flows would not increase considerably in the future. As stated above, it was on this basis that the Board determined not to exempt the addition of freestanding structures from the minimum lot size requirements. Mr. Ramos has offered to remove the fixture units and cap off the connection of the second home to the septic system once it is no longer required for his use and has agreed to enter into an Agreement of Restriction to be recorded with the property Chain of Title that stipulates that this property may not be sold until the fixture units in the second dwelling are removed and the connection to the existing septic system from this second home is eliminated (capped off).

RECOMMENDATION:

Approve Mr. Ramos' request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157 with the following stipulations: 1) Once the second home is no longer required for use of the Ramos family, the fixture units will be removed from that home and the connection to the septic system will be eliminated (capped off); and, 2) Mr. Ramos must enter into an Agreement of Restriction, which shall become a part of the Chain of Title, that the fixture units in the second home (granny flat) must be removed prior to sale of the property or whenever the second home is no longer required for the use of Mr. & Mrs. Ramos, whichever occurs first.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
San Bernardino County Environmental Health Services – Ray Britain
San Bernardino County Building and Safety – Barbara Johnston/Joe Trujillo (B200416593)